Malayan Agricultural Producers Association v Industrial Court Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25-164-95
ABDUL KADIR SULAIMAN J
29 NOVEMBER 1996

Labour Law *— Industrial Court — Jurisdiction — Collective agreement — Industrial Court refused to take cognizance of collective agreement — Duty of Industrial Court to take cognizance — Discretion of Industrial Court to refuse to take cognizance — Whether Industrial Court acted outside its jurisdiction by taking irrelevant matters into consideration — Industrial Relations Act 1967 ss 14, 16*

Civil Procedure *— Jurisdiction — High Court — Disagreement between members of trade union on collective agreement — Whether High Court was the proper forum for dissatisfied members to challenge the collective agreement — Whether they should do so before the Industrial Court*

The applicant, a trade union of employers, applied for an order of mandamus to compel the first respondent, the Industrial Court, to take cognizance of three collective agreements ('the agreements') it entered into with the second respondent — a trade union of workmen — on 29 May 1995 which were duly deposited in the Industrial Court pursuant to s 16 of the Industrial Relations Act 1967 ('the Act') or in the alternative, for the first respondent to act in accordance with s 16 of the Act in relation to the agreements. The sole reason for the Industrial Court not performing its functions under s 16 of the Act for cognizance of the agreements was on account of the order made by the Shah Alam High Court — pursuant to an action filed by the third to ninth respondents who were members of the second respondent and a few other members against the second respondent — which stated that all actions including any written or oral agreement executed by the second respondent on 14 April 1995 and thereafter was ultra vires and void. The third to ninth respondents intervened in the proceedings to oppose the application of the applicant on the ground that they had an interest to challenge the agreements pursuant to the order of the Shah Alam High Court.

Held, allowing the application:

(1) It would appear from the provisions of s 16 of the Act that once a collective agreement is jointly deposited with the Industrial Court, it becomes the duty of the court to give cognizance to it so as to give effect under s 17 as an award handed down by the court binding on the parties of the agreement. However, sub-s (2)(a) of s 16 gives the discretion to the court to refuse to take cognizance of it but only if the court is of the opinion that the agreement does not comply with s 14 which concerns the forms and substance of a collective agreement. If the requirements of

s 14 are complied with, there is no alternative for the court but to give formal recognition of the agreement. Further, even if such agreement deposited is not in compliance with s 14 as to some parts, by sub-s 2(b) thereof the court is given the discretion to give direction to the parties to amend that part of the agreement as does not comply with the section, and by sub-s (3) if such direction given and the parties fail to carry out such direction to amend, the court is given the power to so amend the agreement in the manner directed after giving the parties a reasonable opportunity of being heard and such amended agreement becomes the collective agreement between the parties.

Therefore, in this case, for withholding the consideration of the agreements duly deposited by the applicant and the second respondent, the Industrial Court was clearly acting outside its jurisdiction having taken irrelevant matters into consideration. As for the originating motion in the Shah Alam High Court, the Industrial Court was not a party to it and therefore, was not a matter to be concerned when exercising its powers under s 16 of the Act. In the circumstances, the application by the applicant must succeed (see p 463E–I).

(2) This court was not the forum for the third to ninth respondents to oppose the application of the applicant on the ground that they had an interest to challenge the agreements pursuant to the order of the Shah Alam High Court. This court as a court of review was to consider the application of the applicant in the light of the provisions of s 16 of the Act. If this court was satisfied that the application by the applicant was made out, an order of mandamus would issue for the Industrial Court to act in accordance with the said section. If the third to the ninth respondents were unhappy and had valid grounds to oppose the consideration of the Industrial Court pursuant to s 16 of the Act, they should do so before the Industrial Court when it was considering those provisions in regard to the application by the applicant and the second respondent for cognizance of the agreements. Their dispute with the second respondent had been resolved by the Shah Alam High Court. If the application by the applicant was valid, this court of review could not withhold the granting of the order sought for the reason that the third to ninth respondents were in disagreement with the way the agreements came about (see p 462E–H).

[Bahasa Malaysia summary

Pemohon, iaitu kesatuan sekerja majikan-majikan, memohon untuk satu perintah untuk memaksa penentang pertama, iaitu Mahkamah Perusahaan, untuk mengambil perhatian tentang tiga perjanjian kolektif ('perjanjian-perjanjian tersebut') yang diikat dengan penentang

kedua — satu kesatuan sekerja pekerja-pekerja — pada 29 Mei 1995 yang telah didepositkan dengan Mahkamah Perusahaan mengikut s 16 Akta Perhubungan Perusahaan 1967 ('Akta tersebut') atau sebagai alternatifnya, untuk penentang pertama bertindak mengikut s 16 Akta tersebut berkaitan dengan perjanjian-perjanjian tersebut. Sebab tunggal bagi Mahkamah Perusahaan tidak melaksanakan fungsinya di bawah s 16 Akta tersebut untuk mengambil perhatian tentang perjanjian-perjanjian tersebut adalah kerana satu perintah yang dibuat oleh Mahkamah Tinggi Shah Alam — ekoran daripada satu tindakan yang difailkan oleh penentang ketiga ke kesembilan yang merupakan ahli-ahli penentang kedua dan beberapa ahli lain terhadap penentang kedua — yang menyatakan bahawa kesemua tindakan termasuk apa-apa perjanjian bertulis atau lisan yang dilaksanakan oleh penentang kedua pada 14 April 1995 dan selepasnya adalah ultra vires dan tidak sah. Penentang ketiga ke kesembilan mencelah dalam prosiding ini untuk menentang permohonan pemohon atas alasan bahawa mereka mempunyai kepentingan untuk mencabar perjanjian-perjanjian tersebut mengikut perintah Mahkamah Tinggi Shah Alam.

Diputuskan, membenarkan permohonan:

(1) Daripada peruntukan-peruntukan s 16 Akta tersebut, apabila perjanjian kolektif didepositkan dengan Mahkamah Perusahaan secara bersama, adalah menjadi kewajipan mahkamah itu untuk mengambil perhatian tentangnya untuk memberikan kesan di bawah s 17 sebagai satu award yang diberikan oleh mahkamah itu yang mengikat pihak-pihak kepada perjanjian tersebut. Bagaimanapun, sub-s 2(a) kepada s 16 memberikan budi bicara kepada mahkamah itu untuk menolak untuk mengambil perhatian tentangnya tetapi hanya jika mahkamah itu berpendapat bahawa perjanjian itu tidak mematuhi s 14 yang berkaitan dengan bentuk dan isi sesuatu perjanjian kolektif. Jika kehendak-kehendak s 14 dipatuhi, tiada alternatif bagi mahkamah itu tetapi untuk memberikan pengesahan yang formal bagi perjanjian itu. Selanjutnya, walaupun perjanjian sedemikian yang didepositkan tidak mematuhi s 14 berkenaan dengan beberapa bahagian, mengikut sub-s 2(b) mahkamah itu diberi budi bicara untuk memberikan arahan kepada pihak-pihak untuk meminda bahagian perjanjian itu yang tidak mematuhi seksyen itu, dan mengikut sub-s (3) jika arahan sedemikian diberikan pihak-pihak gagal untuk melaksanakan arahan untuk membuat pindaan, mahkamah itu diberi kuasa untuk meminda perjanjian tersebut dalam cara seperti yang diarahkan selepas memberikan pihak-pihak peluang yang munasabah untuk didengar dan perjanjian yang dipinda itu menjadi perjanjian kolektif di antara pihak-pihak itu.

Oleh itu, dalam kes ini, dengan menahan pertimbangan perjanjian-perjanjian tersebut yang telah didepositkan oleh pemohon dan penentang kedua, Mahkamah Perusahaan dengan jelasnya telah bertindak di luar bidang kuasanya dengan mengambil kira perkara-perkara yang tidak relevan untuk pertimbangan. Berkenaan dengan usul pemula di Mahkamah Tinggi Shah Alam, Mahkamah Perusahaan tidak merupakan suatu pihak kepadanya dan dengan itu, bukanlah suatu perkara yang perlu diambil kira apabila melaksanakan kuasa-kuasanyadi bawah s 16 Akta tersebut. Dalam keadaan-keadaan ini, permohonan oleh pemohon mesti dibenarkan (lihat ms 463E–I).

(2) Mahkamah ini bukannya forum bagi penentang ketiga ke kesembilan untuk menentang permohonan pemohon atas alasan bahawa mereka mempunyai kepentingan untuk mencabar perjanjian-perjanjian tersebut mengikut perintah Mahkamah Tinggi Shah Alam. Mahkamah ini sebagai satu mahkamah kajian semula dikehendaki untuk menimbangkan permohonan pemohon memandangkan peruntukan-peruntukan s 16 Akta tersebut. Jika mahkamah berpuas hati bahawa permohonan oleh pemohon telah dibuktikan, perintah mandamus akan dikeluarkan bagi Mahkamah Perusahaan untuk bertindak mengikut seksyen tersebut. Jika penentang ketiga ke kesembilan tidak berpuas hati dan mempunyai alasan-alasan yang sah untuk menentang pertimbangan Mahkamah Perusahaan mengikut s 16 Akta tersebut, mereka sepatutnya berbuat demikian di hadapan Mahkamah Perusahaan apabila ianya menimbangkan peruntukan-peruntukan berkaitan dengan permohonan oleh pemohon dan penentang kedua untuk mengambil perhatian tentang perjanjian-perjanjian tersebut. Pertikaian mereka dengan penentang kedua telah diselesaikan oleh Mahkamah Tinggi Shah Alam. Jika permohonan oleh pemohon adalah sah, mahkamah kajian semula ini tidak boleh menahan pemberian perintah yang dipohon atas sebab bahawa penentang ketiga ke kesembilan tidak bersetuju dengan cara perjanjian-perjanjian tersebut diperolehi (lihat ms 462E–H).]

Notes

For cases on jurisdiction of the Industrial Court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 943–974.

For cases on jurisdiction of the High Court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2151–2173.

Legislation referred to

Industrial Relations Act 1967 ss 14, 16, 17, 26(2)

N Sivabalah (*Shearn Delamore & Co*) for the plaintiff. A
P Kuppusamy (*P Kuppusamy & Co*) for the second respondent.
N Navaratnam and *R Kesavan* (*Md Tajuddin & Co*) for the respondents.

Cur Adv Vult

B

Abdul Kadir Sulaiman J: The applicant, a trade union of employers in the agricultural-related industries in Malaya, applied for an order of mandamus to compel the first respondent, the Industrial Court, to take cognizance of three collective agreements ('the agreements') it entered into with the second respondent which were duly deposited in the Industrial Court pursuant to s 16 of the Industrial Relations Act 1967 ('the Act') on C
29 May 1995; or in the alternative, for the first respondent to act in accordance with s 16 in relation to the agreements. The second respondent is a trade union of workmen which represents estate staff engaged on estates or agricultural undertakings in Malaya. On 22 April 1996, this court granted leave to the third to ninth respondents — who are members D
of the second respondent union — to intervene in the proceedings to oppose the application of the applicant.

The agreements, exhs SCJ8, SCJ9 and SCJ10, were executed on 29 May 1995 by Thamotharam on behalf of the second respondent who, at the material time according to the record kept with the Director General E
of Trade Unions, was its Hon General Secretary. According to the evidence, during the negotiations held with the representatives of the applicant for the agreements, Thamotharam and R Krishnan, as the president of the union and its executive secretary represented the second respondent. SCJ8 is the 1991 agreement for the period 1 January 1991–31 December 1993. F
SCJ9 is the variation agreement 1994 extending the 1991 agreement for a period of one year from 1 January–31 December 1994. SCJ10 is the 1995 agreement for the period 1 January 1995–31 December 1997. The agreements, particularly the first two, were long overdue for recognition under s 16 of the Act. The delay was on account of the dispute which arose between the two parties to the agreements which led to the Minister G
referring the dispute to the Industrial Court under s 26(2) of the Act. After two awards were handed down by the Industrial Court — ie Award No 230 of 1991 and Award No 408 of 1993 (the last said award directing the dispute to be heard on a date to be fixed) — the parties withdrew their dispute and the reference was accordingly struck out by the Industrial H
Court on 9 June 1995. While waiting for the hearing of their dispute, the two parties renegotiated and came to an agreement resulting in the agreements. Hence on 29 May 1995 they jointly deposited the same with the Industrial Court for cognizance under s 16 of the Act.

Under normal circumstances, the Industrial Court would have sat to I
exercise its powers under s 16 of the Act for cognizance of the agreements. But, in this case, it did not for the reason that there was an action by originating summons filed in the Shah Alam High Court by the third to

ninth respondents and a few other members of the second respondent union against the second respondent, Thamotharam and R Krishnan over the dismissal of the third to fifth respondents from the executive council of the second respondent. Inter alia, the order of the High Court in the said originating summons dated 16 June 1995 as contained in para 5 thereof states that all actions, including any written or oral agreement, executed by the second respondent on 14 April 1995 and thereafter are ultra vires and void.

Notwithstanding the aforesaid order of the High Court, the solicitors for the second respondent by a letter dated 14 September 1995 requested the Industrial Court to take cognizance of the agreements which they had deposited with the court earlier. Inter alia, the said letter stated that the High Court did not make any order annulling the said three collective agreements. The order declaring that all actions including written and oral agreements executed by the second respondent on 14 April 1995 and thereafter were ultra vires and void cannot be interpreted to annul the agreements. The agreements were signed by the general secretary, Thamotharam on behalf of the union which does not require the approval of the Exco of the second respondent to do so. Further, at the Extraordinary Delegates Conference of the second respondent held on 9 July 1995 a resolution was unanimously passed giving support and endorsement to the agreements.

The Industrial Court replied by its letter of 6 October 1995, which is exh SCJ24 as follows:

> Tetuan Kuppusamy & Co
> Peguambela & Peguamcara
> No 75–B, Jalan 1/12
> 46000 Petaling Jaya.
>
> Tuan,
>
> Perjanjian bersama 1991 & 1995 bertarikh 25 September 1995 di antara pengeluar pertanian Tanah Melayu dengan Kesatuan Kakitangan Ladang-Ladang Seluruh Tanah Melayu (MAPA/MESU) dan perjanjian variasi 1994 MAPA/AMESU bertarikh 29 Julai 1995
>
> Merujuk kepada surat tuan bertarikh 14 September 1995 dimaklumkan bahawa hingga hari ini kami masih belum menerima pandangan daripada Tetuan Shearn Delamore & Co, peguam yang mewakili Persatuan Pengeluar-pengeluar Pertanian Tanah Melayu [the applicant].
>
> 2 Kami telah mempertimbangkan kandungan surat tuan bertarikh 14 September 1995 dan berpendapat bahawa pengiktirafan kepada perjanjian-perjanjian tersebut di atas tidak dapat diberi sekarang berasaskan Perenggan No 5 Perintah Mahkamah Tinggi Shah Alam tersebut bertarikh 16 Jun 1995. Pada pandangan kami perjanjian bertulis yang dimaksudkan dalam perenggan 5 Perintah Mahkamah Tinggi tersebut meliputi perjanjian bersama.
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> 3 Saya adalah diarahkan memaklumkan kepada pihak tuan bahawa Mahkamah Perusahaan hanya dapat memberi pengiktirafan kepada perjanjian tersebut di atas sekiranya pihak All Malayan Estates Staff

Union [the second respondent] memohon dan mendapat Perintah Mahkamah Tinggi Shah Alam bahawa perenggan nombor 5 dalam Perintah Mahkamah Tinggi Shah Alam bertarikh 16 Jun 1995 tidak meliputi perjanjian bersama.

Sekian, terima kasih.

Saya yang menurut perintah,
—Sgd—
(Hj Ahmad bin Hj Suratman)
Pendaftar
Mahkamah Perusahaan

sk
Tetuan Shearn Delamore & Co
Peguambela & Peguamcara
3rd Floor, No 13–2
Jalan Raja Laut
50350 Kuala Lumpur.
(Bil Ruj Tuan: (L) 483/95/HJS/RK).

Thus it is clear that the sole reason for the Industrial Court in this case not performing its functions under s 16 of the Act was on account of the High Court order mentioned above and not on any other grounds.

The third to ninth respondents intervened in this proceeding to oppose this application of the applicant on the ground that they had an interest to challenge the agreements deposited by the applicant and the second respondent in the Industrial Court pursuant to the order of the Shah Alam High Court. To my mind, this court is not the forum for them to do so. This court as a court of review is to consider the application of the applicant in the light of the provisions of s 16 of the Act. If this court is satisfied that the application by the applicant is made out, an order of mandamus would issue for the Industrial Court to act in accordance with the said section. If the third to the ninth respondents are unhappy and have valid grounds to oppose the consideration of the Industrial Court pursuant to s 16 of the Act, they should do so before the Industrial Court when it is considering those provisions in regard to the application by the applicant and the second respondent for cognizance of the agreements. Their dispute with the second respondent has been resolved by the Shah Alam High Court. If the application by the applicant is valid, this court of review cannot withhold the granting of the order sought for the reason that the third to ninth respondents are in disagreement with the way the agreements came about.

Section 16 states:

16 (1) A signed copy of the collective agreement shall be jointly deposited by the parties with the Registrar within one month from the date on which the agreement has been entered into and the Registrar shall thereupon bring it to the notice of the Court for its cognizance.

(2) The Court may in its discretion —

A (a) refuse to take cognizance of the collective agreement deposited under subsection (1) if it is of the opinion that the agreement does not comply with section 14; or

(b) before taking cognizance of the collective agreement deposited under subsection (1), require that such part thereof as does not comply with section 14 shall be amended in such manner B as the court may direct.

(3) If any party to the collective agreement fails to carry out such direction the court may, notwithstanding any other power exercisable under this Act, amend the copy of the collective agreement in the manner directed giving the parties a reasonable C opportunity of being heard and the agreement so amended shall be deemed to be the collective agreement between the parties.

(4) ...

(5) Except in the case provided under subsection (2) or (3), the power of the court under this section may be exercised by the President D sitting alone or, in the case of a Division, by the Chairman sitting alone.

It would appear from the provisions of s 16 that once a collective agreement is jointly deposited with the Industrial Court, it becomes the duty of the court to give cognizance to it so as to give effect under s 17 as an award E handed down by the court binding on the parties to the agreement. With no recognition given by the court, that agreement remains such and will not be binding. Therefore, to the parties concerned, the act of recognition by the court of the agreement so deposited by them is all important more so in this case when the matters covered by the agreements had been long overdue. Subsection (2)(a) of s 16, however, gives the discretion to the F court to refuse to take cognizance of it but only if the court is of the opinion that the agreement does not comply with s 14, which concerns the forms and substance of a collective agreement. So, if the requirements of s 14 are complied with, there is no alternative for the court but to give formal recognition to the agreement. Even if such agreement deposited is G not in compliance with s 14 as to some parts, by sub-s 2(b) thereof the court is given the discretion to give direction to the parties to amend that part of the agreement as does not comply with the section, and by sub-s (3), if after such direction given and the parties fail to carry out such direction to amend, the court is given the power to so amend the agreement in the manner directed after giving the parties a reasonable opportunity of H being heard and such amended agreement becomes the collective agreement between the parties. Therefore, in this case, for withholding the consideration of the agreements duly deposited by the applicant and the second respondent, the Industrial Court was clearly acting outside its jurisdiction having taken irrelevant matters into consideration. As for the originating motion in the Shah Alam High Court, the Industrial Court was I not a party to it and therefore, was not a matter to be concerned when exercising its powers under s 16 of the Act. In the circumstances, this application by the applicant must succeed. The Industrial Court as the

first respondent is hereby ordered to proceed to consider the agreements deposited by the applicant and the second respondent on 29 May 1995 in accordance with the provisions of s 16 of the Act forthwith. No order as to costs is ordered against the second respondent. However, costs is ordered against the third to ninth respondents in favour of the applicant to be taxed unless agreed.

Application allowed.

Reported by Eugene Lee Hong Whye